IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 684 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
MINAXIBEN MANGALAL UNDKAT - Respondent(s)

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Appearance :
MR IM PANDYA ASST.GOVERNMENT PLEADER for Petitioner(s) : 1,
MR ANSHIN H DESAI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/07/2007

ORAL JUDGMENT

1. Mr.I.M. Pandya, learned Assistant Government Pleader for the petitioner State and Mr.Anshin H.Desai, learned

counsel for the respondent.

2. The State, being aggrieved by the Award dtd.11/1/200 passed by the Presiding Officer, Labour Court, Junagadh in Reference (LCJ) No.104 of 1994, is before this Court with a submission that the court below was not justified in answering the Reference in favour of the respondent workman.

3. During the course of the arguments, Mr.Pandya, learned Assistant Government Pleader for the State, referring to para 3 of the additional affidavit submitted that the Rural Road Project was working during the period between 1988 and 1996 and that thereafter, the project is over. He further read that after passing the order by the High Court on 24/1/2001, no recruitment for the post of Typist or Clerk was made. On being persuaded by this statement, I asked Mr.Desai, learned counsel for the respondent workman that if the project is over in 1996, how can any benefit be given to the workman, Mr.Desai submitted that the affidavit is an eyewash and it tries to raise a plea which was never raised before the Labour Court and was never the defence of the present petitioner. Shocked and Surprised, when I asked Mr.Pandya, learned Assistant Government Pleader as to

why the affidavit was read into service, Mr.Pandya, simply said that the State was required to file this affidavit in view of the interim order dtd.24/1/2001.

4. I must record that if a plea is not raised before the lower court by any party, then, without permission of the higher court, such a plea cannot be introduced, nor it can be argued at the time of argument without telling the court that such is an additional plea which was never raised before the Labour Court.
5. The pleadings in relation to closure of the project, is, therefore, rejected.
6. Taking into consideration the totality of the circumstances, I am unable to hold that the learned Labour Court committed any error in setting aside the order of termination.
7. The petition deserves to and is accordingly dismissed with costs of Rs.2000=00 to be paid by the State to the respondent workman. Rule is discharged. Interim relief, if any, is vacated.

(R.S. GARG, J.)

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